

Editor's Note: Reconsideration denied by Order dated March 31, 2003

JAMES W. SIRCY

IBLA 2002-452

Decided January 28, 2003

Appeal from a decision of the California State Office, Bureau of Land Management (BLM), declaring placer mining claims forfeited by operation of law. (CAMC 278607, CAMC 278609).

Affirmed.

Mining Claims: Rental or Claim Maintenance Fees:
Generally

BLM properly declares mining claims forfeited by operation of law when a mining claimant, who filed the location notices and paid the location fee, service charge and maintenance fee for the 2001 assessment year in which the claims were located, as required by 30 U.S.C. § 28f(b) (2002) and 43 CFR 3833.1-5(a) (1), fails to pay the maintenance fee or file the maintenance fee payment waiver certification for the 2002 assessment year on or before September 1, 2001.

APPEARANCES: James W. Sircy, La Tuna Canyon, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

James W. Sircy has appealed an August 1, 2002, Decision issued by the California State Office, Bureau of Land Management (BLM), declaring the Color of Heaven (CAMC 278607) and Lost Haven (CAMC 278609) placer mining claims forfeited by operation of law for failure to file either a maintenance fee of \$100 per claim or a maintenance fee payment waiver certification for the 2002 assessment year on or before September 1, 2001.

On appeal, Sircy relates that he "acquired the two claims by quitclaim on April 21, 2001 and received confirmation of the name change from BLM on July 5, 2001." He states that when he purchased the claims the vendor of the claims indicated that "the fee/waiver for 2002 was taken care of."

As enacted by Congress, the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (1993 Act), required mining claimants to pay a claim maintenance fee on or before August 31 of each year for the years 1994 through 1998. On October 21, 1998, Congress passed

the Omnibus Consolidated and Emergency Supplemental Appropriation Act for 1999, Pub. L. No. 105-27, 112 Stat. 2681-235 (1999 Act), which states:

The holder of each unpatented mining claim, mill, or tunnel site, located pursuant to the mining laws of the United States, whether located before, on or after November 5, 2001, shall pay to the Secretary of the Interior, on or before September 1 of each year for years 2002 through 2003, a claim maintenance fee of \$100 per claim or site[.] Such claim maintenance fee shall be in lieu of the assessment work requirement contained in the Mining Law of 1872 (30 U.S.C. 28 to 28e) and the related filing requirements contained in section 1744(a) and (c) of Title 43.

30 U.S.C. § 28f(a) (2000).

For newly located claims, 30 U.S.C. § 28f(b) provides:

The claim maintenance fee payable pursuant to subsection (a) of this section for any assessment year shall be paid before the commencement of the assessment year, except that for the initial assessment year in which the location is made, the locator shall pay the claim maintenance fee at the time the location notice is recorded with the Bureau of Land Management. The location fee imposed under section 28g of this title shall be payable not later than 90 days after the date of location.

The failure to pay the claim maintenance fee "shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law." 30 U.S.C. § 28i (2000).

Congress also provided in 30 U.S.C. § 28f(d) (1) (2000) that the claim maintenance fee required under this section may be waived for a claimant who certifies in writing to the Secretary that on the date the payment was due, the claimant and all related parties:

(A) held not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof on public lands; and

(B) have performed assessment work required under the Mining Law of 1872 (30 U.S.C. 28-28e) to maintain the mining claims held by the claimant and such related parties for the assessment year ending on noon on September 1 of the calendar year in which payment of the claim maintenance fee was due.

BLM has implemented the 1999 Act with a regulation requiring a claimant to file "a waiver certification on or before September 1 of each year to hold the claims each assessment year beginning at 12 o'clock noon

on September 1 of the calendar year the certification is due, through September 1, 2002." 43 CFR 3833.1-7(d).

The regulation implementing the requirement to pay the maintenance fee at the time the location notice is recorded with BLM pursuant to FLPMA tracks 30 U.S.C. § 28f(b) (2000) quoted above. 43 CFR 3833.1-5(a) (1) states:

The initial \$100 nonrefundable maintenance fee for the assessment year in which the mining claim or site is located shall be paid for each mining claim, mill site or tunnel site at the time of its filing with BLM pursuant to section 314(b) of FLPMA and § 3833.1-2. If such claims or sites are located prior to September 1, and the notice of location is properly filed within the FLPMA time frame but after September 1, then the \$100 fee that was due on September 1 for the succeeding assessment year shall be paid at the time of filing of the location notice along with the initial \$100 fee.

[1] The record for the Color of Heaven placer claim (CAMC 278607) contains Receipt No. 266834 reflecting that on February 28, 2001, Larry D. Morris paid a "New Mining Claim Location Fee," a "New Mining Claim Maintenance Fee" of \$100, and a "New Mining Claim Svc Charge" of \$10 for Claim No. CAMC 278607, the "Color of Heaven" placer mining claim, located on January 27, 2001.

The record for the Lost Haven placer claim (CAMC 278609) contains Receipt No. 267357, reflecting that on March 1, 2001, Larry D. Morris paid BLM a "New Mining Claim Location Fee" of \$25, a "New Mining Claim Maintenance Fee" of \$100, and a "New Mining Claim Svc Charge" of \$10 for the "Lost Haven" placer mining claim located on January 28, 2001. It would appear that Morris properly filed the location notice and paid the location fee, service charge, and maintenance fee for the 2001 assessment year, as required by the 1999 Act and 43 CFR § 3833.1-5(a) (1).

However, the fact that Morris satisfied the maintenance fee requirement for the 2001 assessment year does not establish that he paid the mining claim maintenance fee or filed the maintenance fee payment waiver certification for the 2002 assessment year on or before September 1, 2001, and there is no evidence to that end in the record.

The 1999 Act as quoted above, states "the claim maintenance fee * * * for any assessment year shall be paid before commencement of the assessment year [except for the maintenance fee for the initial assessment year]." The initial maintenance "\$100 nonrefundable maintenance fee [is] for the assessment year in which the mining claim or site is located." 1/ The assessment year in which the mining claims were located was 2001. Morris paid the initial maintenance fee when the location notice was filed with BLM. Both the 1999 Act and regulations recognize that, after payment of the maintenance fee when filing the location notice, a mining claim maintenance fee payment or maintenance fee payment waiver certification

must be filed in advance of the following assessment year. Sircy's argument assumes that the fees Morris paid when the location notices were filed in February and March 2001 were for the 2002 assessment year.

Morris had satisfied the requirements of 43 CFR 3833.1-5 by paying the fees when the claims were located in 2001. This did not fulfill the requirement that maintenance fees or a maintenance fee payment waiver certification for the 2002 assessment year be filed on or before September 1, 2001. The 2002 maintenance fees were not paid.

Sircy's assertion on appeal that he had tendered payment for the 2003 claim/site filing does not alter the fact that the claims were properly declared forfeited for failure to either pay the maintenance fees or file a mining claim payment waiver certification on or before September 1, 2001, for the 2002 assessment year. However, Sircy is entitled to a refund of the amounts tendered for the 2003 assessment year.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R.W. Mullen
Administrative Judge

I concur:

James F. Roberts
Administrative Judge

1/ Implicit in the latter portion of 43 CFR 3833.1-5(a) (1) is the recognition that the maintenance fee and maintenance fee payment waiver certification is made in advance of the assessment year "beginning at 12 o'clock noon on September 1 of the calendar year the certification is due, through September 1, 2002." 43 CFR 3833.1-7(d). Otherwise, there would be no necessity to include the additional \$100 maintenance fee for the succeeding year along with the initial \$100 fee, applicable to the assessment year in which the claim or site was located.